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5 Attorneys for Mr. Silva-Vasquez

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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
10 **(HONORABLE BARRY T. MOSKOWITZ)**

11 UNITED STATES OF AMERICA,	)	Case No. 08CR2424-BTM
	)	
12 Plaintiff,	)	DATE: August 29, 2008
	)	TIME: 1:30 p.m.
13 v.	)	
	)	<b><u>AMENDED</u></b> NOTICE OF MOTIONS AND
14 HAMILTON SILVA-VASQUEZ,	)	MOTIONS TO:
	)	
15 Defendant.	)	1) COMPEL DISCOVERY; AND
	)	2) GRANT LEAVE TO FILE FURTHER
	)	MOTIONS.
16 _____	)	_____

17 TO: KAREN P. HEWITT, UNITED STATES ATTORNEY; AND  
18 CHRISTOPHER. P TENORIO, ASSISTANT UNITED STATES ATTORNEY:

19 PLEASE TAKE NOTICE that, on August 29, 2008 at 1:30 p.m., or as soon thereafter as counsel may  
20 be heard, defendant, Hamilton Silva, by and through his attorneys, Erick L. Guzman, and Federal Defenders  
21 of San Diego, Inc., will ask this Court to enter an order granting the following motions.

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**MOTIONS**

Defendant, Hamilton Silva, by and through his attorneys, Erick L. Guzman, and Federal Defenders of San Diego, Inc., asks this Court, pursuant to the United States Constitution, the Federal Rules of Criminal Procedure, and all other applicable statutes, case law, and local rules, for an order to:

- (1) Compel Discovery; and
- (2) Grant Leave to File Further Motions.

These motions are based upon the instant motions and notice of motions, the attached statement of facts and memorandum of points and authorities, the files and records in the above-captioned matter, and any and all other materials that may come to this Court's attention prior to or during the hearing of these motions.

Respectfully submitted,

DATED: August 14, 2008

/s/ Erick L. Guzman  
ERICK L. GUZMAN  
Federal Defenders of San Diego, Inc.  
Attorneys for Mr. Silva  
Erick\_Guzman@fd.org

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Attorneys for Mr. Silva

UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF CALIFORNIA  
 (HONORABLE BARRY T. MOSKOWITZ)

UNITED STATES OF AMERICA,	)	Criminal No. 08CR2424-BTM
	)	
	)	DATE: August 29, 2008
	)	TIME: 1:30 p.m.
Plaintiff,	)	
	)	MEMORANDUM OF POINTS AND
v.	)	AUTHORITIES IN SUPPORT OF
HAMILTON SILVA,	)	DEFENDANT'S MOTIONS
	)	
Defendant.	)	

I.

**STATEMENT OF FACTS<sup>1</sup>**

On June 29, 2008, Mr. Silva was arrested for illegal entry pursuant to 8 U.S.C §1326. On July 28, 2008, the government received an indictment, charging Mr. Silva with violating 8 U.S.C §1326(a) & (b). Mr. Silva pled not guilty. These motions follow.

II.

**COMPEL ALL DISCOVERABLE MATERIAL**

Mr. Silva requests all discoverable material pursuant to Federal Rule of Criminal Procedure 16, Brady v. Maryland, 373 U.S. 83 (1963), Giglio v. United States, 405 U.S. 150 (1972). This includes material that may support any defense pre-trial motions. See United States v. Cedano-Arellano, 332 F.3d 568 (9th Cir.

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<sup>1</sup> These "facts" are based on discovery provided by the government. Mr. Silva does not concede the veracity of any of these allegations.

2003) (Rule 16 applies to discovery material to defense pre-trial motions); United States v. Gamez-Orduno,  
235 F.3d 453, 462 (9th Cir. 2000) (Brady applies to material supporting defense pre-trial motions). Mr. Silva  
also requests any evidence that the government may potentially attempt to enter vis-a-vis rule Federal Rule  
of Evidence 404(b).

Mr. Silva also requests the court to order access to his "A-File" pursuant to Rule 16(a)(1)(B) of the  
Federal Rule of Criminal Procedure, which provides that "upon request of the defendant, the government  
shall furnish to the defendant such copy of his prior criminal record, if any, as is within the possession,  
custody, or control of the government . . . ."

Mr. Silva requests all arrest reports, investigator's notes, memos from arresting officers, dispatch  
tapes, sworn statements, and prosecution reports pertaining to Mr. Silva and available under Fed. R. Crim.  
P. 16(a)(1)(B) and (C), Fed. R. Crim. P. 26.2 and 12(I). Mr. Silva specifically requests that all dispatch tapes  
or any other audio or visual tape recordings which exist and which relate in any way to his case and or his  
arrest be preserved and provided in their entirety.

Specifically, Mr. Silva requests a copy of the audiotape of *any* deportation hearing, as well as a  
transcript of any such proceeding.

### III.

#### LEAVE TO FILE FURTHER MOTIONS

Mr. Silva has not yet received all requested discovery nor viewed his "A-File." After doing so, it is  
likely that Mr. Silva will need to file additional motions. Mr. Silva respectfully requests the court leave to  
file further motions if necessary.

### IV.

#### CONCLUSION

Mr. Silva requests that the Court to grant the above motions.

Respectfully submitted,

Dated: August 14, 2008

/s/ Erick L. Guzman  
ERICK L. GUZMAN  
Federal Defenders of San Diego, Inc.  
Attorneys for Mr. Silva

**ERICK L. GUZMAN**  
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Attorneys for Hamilton Silva-Vasquez

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
(HONORABLE BARRY T. MOSKOWITZ)

UNITED STATES OF AMERICA,	)	Case No. 08CR2424-BTM
	)	
Plaintiff,	)	
	)	
v.	)	<b>CERTIFICATE OF SERVICE</b>
	)	
HAMILTON SILVA-VASQUEZ,	)	
	)	
Defendant.	)	

Counsel for Defendant certifies that the foregoing pleading is true and accurate to the best of his information and belief, and that a copy of the foregoing document has been served this day upon:

Christopher Paul Tenorio  
Christopher.Tenorio@usdoj.gov, Marilyn.Weaver@usdoj.gov, efile.dkt.gc1@usdoj.gov

Respectfully submitted,

DATED: August 14, 2008

/s/ Erick L. Guzman  
**ERICK L. GUZMAN**  
Federal Defenders of San Diego, Inc.  
Attorneys for Hamilton Silva-Vasquez